

**Shell Malaysia Trading Sdn Bhd v  
Pemungut Duti Setem, Pulau Pinang**

HIGH COURT (PENANG) — ORIGINATING MOTION NO 25-6 OF 1996  
VINCENT NG J  
25 AUGUST 1997

*Revenue Law — Stamp duty — Assessment — Appeal against — Computation of the stipulated 21-day appeal period under s 39(1) of the Stamp Act 1949 — Whether appeal to High Court against assessment of Collector of Stamp Duty must be made within 21 days from date of issue of assessment notice — Whether appeal was filed out of time — Whether court should grant extension of time to file appeal — Stamp Act 1949 s 39*

**Words and Phrases** — ‘Assessment’ — Stamp Act 1949 s 39

The applicants entered into a sublease agreement (‘the agreement’) to secure a 60-year sublease of a piece of land. The agreement was duly submitted to the respondent, the Collector of Stamp Duty, Penang (‘the collector’), for assessment of stamp duty. On 30 October 1995, the collector issued his assessment under an assessment notice in Form PDS 14, which required the applicants to pay a stamp duty of RM87,542 within 21 days from the date thereof. By a letter dated 13 November 1995, the applicants lodged an objection to the assessment. The objection was rejected by the collector vide his letter to the applicants dated 8 January 1996 (‘the rejection letter’). In the rejection letter, the applicants were also required to make payment of the assessed stamp duty within 14 days from the date of the letter. On 17 January 1996, the applicants paid the stamp duty of RM87,542 to the respondent under protest and notified the latter of their intention to appeal to the High Court against the assessment. The applicants filed an appeal on 26 January 1996, which was about three months after the date of issuance of the Form PDS 14, though only 18 days (but within 21 days) after the date of the rejection letter. The issue before the court concerned the construction of the word ‘assessment’ in s 39(1) of the Stamp Act 1949 (‘the Act’) as to the effective date from which the stipulated 21-day appeal period under s 39(1) of the Act has to be calculated. The applicants also applied for leave to file the appeal under s 39(1) out of time if the court were to decide that the appeal was filed after the stipulated period.

**Held**, allowing the application:

- (1) The assessment, as expressed by the amount of duty payable, in the collector’s assessment notice under his Form PDS 14 represents only a provisional assessment, which does not complete the statutory assessment exercise. Such provisional assessment only becomes a final assessment, from which a statutory appeal lies, upon expiry of the time allowed by the collector for stamping the document, if no dissent on the assessment is lodged during such time allowed; or, in the event of dissent, upon service of a

- A notice informing the applicant of the collector's decision on the applicant's objection on the provisional assessment. In other words, the word 'assessment' in s 39 of the Act could only mean 'final assessment', from which date an applicant's statutory right of appeal to the High Court has to be computed. In this case, the rejection letter constituted the final assessment from which date the applicants would have 21 days to appeal to the High Court. Therefore, the applicants' appeal to this court was filed well within the time limit prescribed by s 39(1) of the Act (see pp 735F-I and 736A).
- B
- C (2) Having considered the manner of expression in s 39(1), as viewed within the context of the whole Act, the provision as to time set forth therein is merely directory or declaratory rather than mandatory in nature. Further, it is not without significance that the Legislature had chosen to use the word 'may' in the phrase 'may, within twenty-one days after' occurring in s 39(1) of the Act. Moreover, in this case, the applicant was merely following a decided authority applicable at the material time. Such circumstances would constitute a compelling reason for the court to exercise its discretion in the applicant's favour, under its additional powers set out in para 8 of the Schedule to s 25(2) of the Courts of Judicature Act 1964 (see p 739D-H).
- D
- E

**[Bahasa Malaysia summary]**

- F Pemohon-pemohon telah mengikat suatu perjanjian pajakan kecil ('perjanjian tersebut') untuk mencagar pajakan kecil sebidang tanah selama 60 tahun. Perjanjian tersebut diserahkan seperti yang sepatutnya kepada penentang, Pemungut Duti Setem, Pulau Pinang ('pemungut'), untuk taksiran duti setem. Pada 30 Oktober 1995, pemungut tersebut telah mengeluarkan taksiran beliau di bawah notis taksiran dalam Borang PDS 14, yang menghendaki pemohon-pemohon membayar duti setem sebanyak RM87,542 dalam tempoh 21 hari dari tarikh itu. Melalui sepucuk surat bertarikh 13 November 1995, pemohon-pemohon mengemukakan bantahan terhadap taksiran. Bantahan ditolak oleh pemungut menerusi surat beliau kepada pemohon-pemohon bertarikh 8 Januari 1996 ('surat penolakan'). Dalam surat penolakan, pemohon-pemohon juga dikehendaki membuat bayaran duti setem dalam tempoh 14 hari dari tarikh surat tersebut. Pada 17 Januari 1996, pemohon-pemohon telah membayar duti setem sebanyak RM87,542 kepada penentang di bawah bantahan dan memaklumkan kepada penentang tentang hasrat untuk merayu kepada Mahkamah Tinggi terhadap taksiran. Pemohon-pemohon memfailkan satu rayuan pada 26 Januari 1996, kira-kira tiga bulan selepas tarikh pengeluaran Borang PDS 14, walaupun hanya 18 hari (tetapi dalam tempoh 21 hari) selepas tarikh surat penolakan. Isu di hadapan mahkamah berkaitan dengan tafsiran perkataan 'taksiran' dalam s 39(1) Akta Setem 1949 ('Akta tersebut') mengenai tarikh berkesan dari mana tempoh rayuan 21 hari yang disyaratkan harus dikira. Pemohon-pemohon juga memohon untuk
- G
- H
- I

kebenaran memfailkan rayuan di bawah s 39(1) di luar masa sekiranya mahkamah memutuskan bahawa rayuan difailkan selepas tempoh yang ditetapkan.

**Diputuskan**, membenarkan permohonan:

- (1) Taksiran itu, seperti yang dinyatakan oleh amaun duti yang harus dibayar, dalam notis taksiran pemungut di bawah Borang PDS 14 beliau cuma mewakili suatu taksiran bersyarat, yang tidak menyempurnakan latihan taksiran statutori. Taksiran bersyarat demikian hanya menjadi taksiran muktamad, dari mana terletaknya rayuan statutori, apabila tamatnya masa yang dibenarkan oleh pemungut untuk menera dokumen, sekiranya tiada pertentangan atas taksiran dikemukakan semasa tempoh yang dibenarkan; atau sekiranya pertentangan berlaku, apabila notis disampaikan memaklumkan pemohon tentang keputusan pemungut atas bantahan pemohon terhadap taksiran bersyarat. Dalam ertikata lain, perkataan 'taksiran' dalam s 39 Akta tersebut hanya boleh bermakna 'taksiran muktamad', dari tarikh mana hak merayu statutori seorang perayu kepada Mahkamah Tinggi haruslah dikira. Dalam kes ini, surat penolakan membentuk taksiran muktamad dari tarikh mana pemohon-pemohon akan mempunyai 21 hari untuk merayu kepada Mahkamah Tinggi. Maka, rayuan pemohon-pemohon kepada mahkamah ini difailkan dalam had masa yang ditetapkan oleh s 39(1) Akta tersebut (lihat ms 735F-I dan 736A).
- (2) Selepas mempertimbangkan bagaimana ia ungkapkan dalam s 39(1), seperti yang dipandang dalam konteks keseluruhan Akta, peruntukan mengenai masa yang dinyatakan dalamnya hanyalah sekadar mengarah atau mengisytihar berbanding dengan bersifat mandatori. Seterusnya, ia bukanlah tanpa kepentingan bahawa Badan Perundangan telah memilih untuk menggunakan perkataan 'boleh' dalam ungkapan 'boleh, dalam tempoh dua puluh satu hari dari' yang menonjol dalam s 39(1) Akta tersebut. Tambahan pula, dalam kes ini, pemohon cuma menurut autoriti yang diputuskan yang terpakai pada masa material. Keadaan demikian akan membentuk sebab yang mendorong mahkamah melaksanakan budi bicaranya memihak kepada pemohon-pemohon, di bawah kuasa tambahan yang dinyatakan dalam perenggan 8 Jadual s 25(2) Akta Mahkamah Kehakiman 1964 (lihat ms 739D-H).]

[*Editorial Note:* The respondent's appeal to the Court of Appeal vide Civil Appeal No P-01-81-97 has been withdrawn.]

**Notes**

For a case on assessment of stamp duty, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) para 1981.

**A Cases referred to**

*AG for Canada & Anor v Halett & Carey Ltd & Anor* [1952] AC 427 (refd)

*Arthur Yates & Co Ltd v Ministry of Agriculture and Fisheries* [1979] 1 NZLR 469 (refd)

**B** *Aspatra Sdn Bhd & Ors v Bank Bumiputra Malaysia Bhd & Anor* [1987] 2 CLJ 377 (refd)

*Bank of New Zealand v Cermac Modular Industries Ltd* [1972] NZLR 661 (refd)

*Barker v Palmer* (1881–82) 8 QBD 9 (refd)

*Cheatley v The Queen* (1972) 127 CLR 291 (refd)

**C** *DR Fraser & Co Ltd v Minister of National Revenue* AIR 1949 PC 120 (refd)

*Damodaran v Vasudevan* [1975] 2 MLJ 231 (refd)

*Ex p Tasker, Re Hamman* [1971] 1 NSWLR 804 (refd)

*H Young & Co v The Mayor and Corporation of Royal Leamington SPA* (1882–83) 8 App Cas 517 (refd)

**D** *Howard & Ors v Bodington* (1877) 2 PD 203 (refd)

*Imperial Chemical Industries Ltd v Shatwell* [1965] AC 656 (refd)

*Jeffs & Ors v New Zealand Dairy Production and Marketing Board & Ors* [1966] 3 All ER 863 (refd)

*Ketua Pengarah Hasil Dalam Negeri v Kim Thye & Co* [1992] 4 CLJ 2079 (refd)

**E** *Lee Lian & Ors v PP* [1956] MLJ 191 (refd)

*Land Executive Committee of Federal Territory v Syarikat Harper Gilfillan Bhd* [1981] 1 MLJ 234 (refd)

*Lee Lee Cheng v Seow Peng Kwang* [1960] MLJ 1 (refd)

**F** *Lim Phin Khian v Kho Su Ming* [1996] 1 MLJ 1 (refd)

*Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271 (refd)

*Majlis Peguam Malaysia & Ors v Joseph Au Kong Weng* [1993] 2 CLJ 417 (refd)

*Pahang South Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor* [1981] 2 MLJ 199 (refd)

**G** *Pamela Ong Siew Im v Majlis Peguam & Ors* [1995] 3 AMR 2111 (refd)

*R v Committee of Lloyd's ex p Moran* [1983] The Times, 24 June (refd)

*R v Price & Ors* (1870–71) LR 6 QB 411 (refd)

**H** *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 (refd)

*Ricket v Metropolitan Railway Co* (1867) LR 2 HL 175 (refd)

*Shell Malaysia Trading Sdn Bhd v Pemungut Duti Setem Johor Bahru* [1995] 1 BLJ 51 (refd)

*State of UP v Radhey Shyam* AIR 1989 SC 682 (refd)

**I** *Stock v Frank Jones (Tipton) Ltd* [1978] 1 WLR 231 (refd)

*Vandyke v Vandyke* (1976) 12 ALR 621 (refd)

*Zainal Abidin bin Haji Abdul Rahman v Century Hotel Sdn Bhd* [1982] 1 MLJ 260 (refd)

**Legislation referred to**

Courts of Judicature Act 1964 s 25(2), para 8 of the Schedule  
 Stamp Act 1949 ss 39, 39(1)  
 Stamp Act 1891 (54 & 55 Vict Ch 39) s 13(1) [UK]

*ES Tay (Goh Eng Kee & Co)* for the applicants.

*Razali bin Che Ani* (Federal Counsel) for the respondent.

**Vincent Ng J:** This matter was heard and decided on 29 February 1996 by me while presiding in Penang. I received a letter dated 15 July 1997 from the Bahagian Undang-Undang Lembaga Hasil Dalam Negeri, Kuala Lumpur which notified that leave to appeal had been obtained by them from the Court of Appeal on 23 June 1997 and they had on 15 July 1997 filed an appeal against my said decision.

Briefly, on 6 June 1995, the applicant/appellant ('the applicants') entered into a sublease agreement ('the sublease agreement') with M/s Farlim Group (Malaysia) Bhd to secure a 60 year-sublease of a piece of land known as Lot No 2499, Mukim 13, Daerah Timur Laut, Pulau Pinang for the purpose of operating a petrol filling and service station.

The sublease agreement was duly submitted to the Collector of Stamp Duty, Penang ('the respondent') for assessment of stamp duty. On 30 October 1995, the Collector issued his assessment under a 'notis taksiran' ('the assessment notice') of even date — in a form apparently prepared and billed by the stamp office as 'Form PDS 14' — which required the applicants to pay a stamp duty of RM87,542 within 21 days from the date thereof. The assessment notice being 'Form PDS 14' (exh THH3 of encl 2) dated 30 October 1995 reads as follows:

|                                   |           |            |
|-----------------------------------|-----------|------------|
| Jabatan Hasil Dalam Negeri        | Telefon:  | 04-261225  |
| Tingkat 3-11,                     |           | 04-261236  |
| Bangunan Dewan Perniagaan Melayu, | 04-261242 |            |
| Peti Surat 660, Lebuh Pantai,     |           | 04-261254  |
| 10910 Pulau Pinang                |           | 04-2612633 |
|                                   | Fax No:   | 04-2628406 |

**PDS 14**

|                             |                                |
|-----------------------------|--------------------------------|
| Shearn Delamore & Co,       | Ruj Tuan:                      |
| 42 Jalan Sultan Ahmad Shah, | Ruj Kami: JHDN P 012/42/68-049 |
| 10050 P Pinang.             | (116/ )                        |
|                             | Tarikh : 30 Oktober 1995       |

**Notis Taksiran**

Received  
 31 October 1995  
 Shearn Delamore & Co  
 Penang

|                                                                                             |
|---------------------------------------------------------------------------------------------|
| Perjanjian SUB-LEASE antara<br>FARLIM GROUP dan SHELL<br>M'SIA TRADING bertarikh 6 Jun 1995 |
|---------------------------------------------------------------------------------------------|

Menurut Akta Setem 1949, notis adalah dengan ini diberi mengenai taksiran yang dibuat atas suratcara yang tersebut di atas. Duti setem sebanyak RM87,542 adalah kena dibayar ke atas suratcara tersebut dalam tempoh

**A**      dua puluh satu hari dari tarikh Notis ini. *Jika tuan/puan tidak berpuas hati dengan taksiran ini tuan/puan boleh merayu terhadapnya tetapi duti itu mestilah dibayar.*

*Cara-cara merayu, membayar dan penalti kerana lewat membayar dihuraikan di muka sebelah. (Emphasis added.)*

**B**      -tt-  
Hj Elias bin Othman, PJK  
Timbalan Pemungut Duti Setem  
Daerah Timur Laut, Pulau Pinang.

|          |                                                                                                                                                                                                           |                                        |                                                      |                                                  |                                    |                                |        |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|------------------------------------------------------|--------------------------------------------------|------------------------------------|--------------------------------|--------|
| <b>C</b> | ASAS PENGIRAAN DUTI YANG DIKENAKAN                                                                                                                                                                        |                                        |                                                      |                                                  |                                    |                                |        |
|          | Bahagian A: Pindahmilik Hartanah (Jualan atau Voluntary Disposition)                                                                                                                                      |                                        |                                                      |                                                  |                                    |                                | RM     |
| <b>D</b> | (a) Balasan (seperti yang dinyatakan dalam Borang KTN 14A)<br>(b) Nilai Pasaran (pada tarikh penyempurnaan KTN 14A)<br>(c) Nilai Pasaran (pada tarikh perjanjian jual beli disempurnakan)                 |                                        |                                                      |                                                  |                                    |                                |        |
| <b>E</b> | <u>Perkiraan Duti Mengikut Kadar di Bawah Butiran 32(a)</u><br>(d) Berdasarkan kepada (a) atau (b) mengikut mana yang lebih tinggi<br>(e) Berdasarkan kepada (a) atau (c) mengikut mana yang lebih tinggi |                                        |                                                      |                                                  |                                    |                                |        |
| <b>F</b> | Duti Yang Dikenakan                                                                                                                                                                                       |                                        |                                                      |                                                  |                                    |                                |        |
|          | Bahagian B: Suratcara-suratcara Jenis Lain                                                                                                                                                                |                                        |                                                      |                                                  |                                    |                                |        |
|          | Duti yang dikenakan<br>(mengikut kadar di bawah butiran Jadual Pertama)                                                                                                                                   |                                        |                                                      |                                                  |                                    |                                |        |
| <b>G</b> | Bahagian C : Suratcara-suratcara sekuriti dan lain-lain yang dikenakan duti ad valorem                                                                                                                    |                                        |                                                      |                                                  |                                    |                                |        |
| <b>H</b> | Jumlah Pinjaman                                                                                                                                                                                           | Jumlah balasan yang/ yang akan dibayar | Jumlah Sewa (Selama tempoh pajakan/bulan Sewaan) (X) | Tempoh Pajakan/ Sewaan (bil pajakan/ Sewaan) (Y) | Purata Sewa Tahunan (Z) = X/Y x 12 | Nilai Untuk Duti (Z) — RM2,400 |        |
| <b>I</b> |                                                                                                                                                                                                           |                                        |                                                      |                                                  |                                    |                                |        |
|          | Duti yang dikenakan<br>(Mengikut kadar di bawah butiran 49(b) Jadual Pertama)                                                                                                                             |                                        |                                                      |                                                  |                                    |                                | 87,492 |
|          | Penalti Dikenakan                                                                                                                                                                                         |                                        |                                                      |                                                  |                                    |                                | 50     |
|          | Jumlah Besar Duti Yang Kena Dibayar                                                                                                                                                                       |                                        |                                                      |                                                  |                                    |                                | 87,542 |

## 1 RAYUAN TERHADAP TAKSIRAN

A

Seksyen 39 Akta Setem 1949 memperuntukkan bahawa *jika seseorang itu tidak berpuas hati dengan sesuatu taksiran ia boleh merayu kepada Mahkamah Tinggi dalam tempoh DUA PULUH SATU HARI* dari tarikh Notis Taksiran. (Emphasis added.)

## 2 CARA PEMBAYARAN

B

Bayaran boleh dibuat dengan cara:

- (i) Wang Tunai (jika duti tidak melebihi RM100); atau
- (ii) Setem Hasil (jika duti tidak melebihi RM500); atau
- (iii) Kiriman Wang, Cek Peguam, Bankers Order (catatkan nama, alamat tuan/puan di belakang cek)

di atas nama Timbalan Pemungut Duti Setem dan hendaklah dikemukakan bersama-sama dengan suratcara-suratcara yang berkenaan kepada Pejabat ini dengan tangan atau melalui surat berdaftar.

C

## 3 DUTI YANG KENA DIBAYAR/PENALTI KERANA LAMBAT MEMBAYAR

Menurut seksyen 47A Akta Setem 1949, penalti 4 kali ganda atas duti yang dikenakan atau RM25 mengikut mana yang lebih tinggi boleh dikenakan jika bayaran tidak dibuat dalam tempoh dua puluh satu hari dari tarikh Notis Taksiran ini.

D

## 4 JADUAL KADAR DUTI SETEM (Bawah butiran 32(a) Jadual Pertama Akta Setem 1949)

Untuk setiap RM100 atau sebahagian daripada RM100:

E

|                             | Amaun<br>Dikenakan<br>(RM) | Kadar | Duti<br>(RM) |
|-----------------------------|----------------------------|-------|--------------|
| Di atas yang pertama .. . . | 100,000                    | 1%    | 1,000        |
| Di atas yang berikut .. . . | 400,000                    | 2%    | 8,000        |
|                             | 500,000                    |       | 9,000        |
| Di atas yang berikut .. . . | 1,500,000                  | 3%    | 45,000       |
|                             | 2,000,000                  |       | 54,000       |
| Lebih daripada .. . .       | 2,000,000                  | 4%    |              |

F

G

By a letter dated 13 November 1995, the applicants lodged an objection to the said assessment upon certain grounds specified therein. The objection was rejected by the respondent vide his letter to the applicants dated 8 January 1996 ('the rejection letter'). In the rejection letter, the applicants were also required to make payment of the assessed stamp duty within 14 days from the date of the letter, ie from 8 January 1996.

H

On 17 January 1996, under cover of a letter of even date, the applicants paid the stamp duty of RM87,542 to the respondent under protest and notified the latter of their intention to appeal to the High Court against the said assessment.

I

The appeal, by way of the above motion (encl 1) dated 26 January 1996 was filed by the applicants on the same day, which was about three

A months after the date of issuance of the said Form PDS 14, though only 18 days (but within 21 days) after the date of the rejection letter. In this motion before me, the applicants had prayed, inter alia (together with five other consequential prayers), that:

- B (1) the applicant/appellant be given leave to file an appeal against the assessment of the respondent out of time (if any);
- (2) the respondent be directed to state and sign a case, setting forth the question raised on his assessment under item 49(1)(b) of the Stamp Act 1949 on the Sub-Lease Agreement dated 6 June 1995 entered into between Farlim Group (Malaysia) Bhd and the Applicant/Appellant (Shell Malaysia Trading Sdn Bhd).

C In order not to belabour the Court of Appeal with superfluous reading, I do not propose to discuss the grounds or merits of the applicants' appeal against the respondent's assessment, as it is neither necessary nor pertinent to the disposal of the current issue at hand. The sole issue that fell for determination was not the merits of the present application, which

D constituted the statutory appeal, but merely whether the respondent's preliminary objection vide 'Notis Bantahan Awal' dated 15 February 1996 (encl 5) should be allowed or overruled; and collaterally, if allowed, whether, in the alternative, leave to filed the appeal under s 39(1) out of time could be granted by an enlargement of the time stipulated thereunder.

E Specifically, the point before me concerns the effective date from which the stipulated 21 days appeal-period under s 39(1) of the Stamp Act 1949 ('the Act') has to be calculated. And the resolution of this question in turn hinges on the construction of the word 'assessment' in s 39(1) of the Act.

By s 39(1) of the Act, the applicants had to lodge his appeal to the High Court within 21 days after the date of assessment. Section 39(1) is

F expressed in the following terms:

Any person who is dissatisfied with the assessment of the Collector *may, within twenty-one days after the date of the assessment* and upon payment of duty in conformity therewith, appeal against the assessment to the High Court, and may for that purpose require the Collector to state and sign a case, setting forth the question upon which his opinion was required, and the assessment made by him. (Emphasis added.)

G

My attention was drawn to this para 1 of the assessment notice by Federal Counsel En Razali, but when I commented that the contents of the assessment notice (Form PDS 14) appeared to be self-crafted and the words appearing in that paragraph were not prescribed in a statutory form, nor were the words statute-sanctioned or legislative-ordained, he smiled in response (of course not a responsive smile) and he readily agreed.

H

In para 1 of the assessment notice, what was required of the applicants should they desire to object to the assessment was couched in the following terms:

I

(1) RAYUAN TERHADAP TAKSIRAN

Seksyen 39 Akta Setem 1949 memperuntukkan bahawa jika seseorang itu tidak berpuas hati dengan sesuatu taksiran ia boleh merayu kepada Mahkamah Tinggi dalam tempoh DUA PULUH SATU HARI dari tarikh Notis Taksiran (para 1).

Lest the respondent is inclined to be taken by or enamoured of those words, it may be said that 'magic words do not a case make'. Since such words are outside the pale of a prescribed or statutory form they constituted no aid and makes not a jot of difference to the construction of the word 'assessment', which now falls to be determined by this court, upon set and settled legal principles. Incidentally, it ought also to be recognized that the practical ramification of those words in para 1 aforesaid, should they be legitimize, would be to relegate the role of the courts from that of (essentially) arbiters of disputes between opponents to that of being also coordinate assessors of stamp duty.

The case of *Shell Malaysia Trading Sdn Bhd v Pemungut Duti Setem Johor Bahru* [1995] 1 BLJ 51 ('the earlier *Shell* case') was cited by counsel for the applicants En ES Tay, wherein the court had occasion to deal precisely with the same point as in the current case. In that earlier *Shell* case, it was held that the Collector's (of Stamp Duty) letter of rejection to an applicant's appeal for a reduction of stamp duty, must be the final assessment, from which (ie date in the letter) his statutory right of appeal must be computed.

True to its designation as a self-crafted form, the material contents of Form PDS 14 in the current application was different from the form — also tagged as 'Form PDS 14' — in the earlier *Shell* case. In the earlier *Shell* case, the procedure for appeal to the Collector was governed by the following instructions:

Sebarang bantahan terhadap taksiran ini mesti dialamatkan/disampaikan kepada pejabat ini dalam tempoh 30 hari dari tarikh surat ini.

Hence, it could be seen that whereas in the earlier *Shell* case the applicant/objector was required to lodge his appeal or objection on the Collector's assessment, direct to the Collector, in the current matter the re-crafted Form PDS 14 enjoined the applicant to lodge his objection direct to the High Court.

The respondent would appear to have fine tuned the current self-crafted Form PDS 14 as compared to the similar form in the earlier *Shell* case. So, even at the time of the hearing hereof, it became apparent to this court that with those freshly crafted clear words in the assessment notice, an appeal against my decision was envisaged, should I abide by the decision in the earlier *Shell* case. It is regrettable that the Act is silent on the procedure to be followed by an applicant who is dissatisfied with the Collector's assessment.

An 'assessment' by the Collector of Stamp Duty is an official and statutory act or operation, entailed in the process of collection of stamp duty. It is an act enjoined on the Collector under s 36 of the Act. Such assessment involves ascertainment of the nature and contents of an instrument, upon consideration of all the relevant circumstances, including sometimes the Collector's own opinion of the value to assign to the instrument. Thus, in as much as the act of assessment is not intended by the Legislature to be an arbitrary, random or capricious exercise of the Collector's powers, it ought in justice, in fairness and in reason to be

- A construed that a person or body (an applicant) charged with payment of the duty who dissents on the assessment is incontrovertibly clothed with a right to be heard on the assessment, as though such right is expressly provided in the Act. And it is axiomatic that an applicant's right to appeal to the High Court under s 39(1) of the Act could not be and is clearly not intended by the Legislature to constitute or substitute the applicant's separate, distinct and clearly perceptible right to be heard before the Collector on the assessment, though this right has to be exercised by the applicant within the time allowed by the Collector for stamping the instrument. In my view, by virtue of s 40 of the Act, such time allowed for stamping shall not be less than 14 days after the service of the notice of assessment.

Indeed, the procedure of assessment practised in England — where s 13(1) of the British Stamp Act 1891 (54 & 55 Vict Ch 39) is in pari materia with s 39(1) of the Act — is consistent with my aforesaid view. On the English practice, the passage appearing in p 72 of 34(1) *Atkin's Court Forms* (2nd Ed) would be illuminating, and thus stated:

- D The practice of the Inland Revenue is to give the applicant a notice of provisional assessment; if the applicant agrees the instrument is stamped with the duty assessed and an adjudication stamp, and is then returned to him. If the applicant dissents he should submit a statement of reasons for dissenting and his view of the basis upon which the instrument should be stamped. He may have an interview with the adjudication officer by appointment if he wishes. Thereupon the final assessment, from which the statutory appeal lies, is made.

- E As such, the irresistible conclusion that this court could draw is that the assessment, as expressed by the amount of duty payable, in the Collector's assessment notice under his 'Form PDS 14' represents only a provisional assessment, which does not complete the statutory assessment exercise. And, such provisional assessment only becomes a final assessment, from which a statutory appeal lies, upon expiry of the time allowed by the Collector for stamping the document, if no dissent on the assessment is lodged during such time allowed; or, in the event of dissent, upon service of a notice informing the applicant of the Collector's decision on the applicant's objection (dissent) on the provisional assessment. Surely, the word 'assessment' in s 39 of the Act imports finality in the Collector's act of evaluating an instrument.

- H Furthermore, one needs hardly to state that to deem the assessment exercise complete without any right given to the applicant to object or dissent, with the concomitant period to dissent, would clearly run foul of the principle of natural justice as expressed in the maxim *audi alteram partem*. In any event, even if there is an ambiguity in the term 'assessment', such ambiguity ought to be resolved in favour of the party who is obliged to pay the stamp duty, as the Act, being a taxing statute, is penal in nature: see *Ketua Pengarah Hasil Dalam Negeri v Kim Thye & Co* [1992] 4 CLJ 2079. Thus, in my view, upon the proper interpretation of s 39(1) of the Act, the word 'assessment' could only mean 'final assessment', from which date an applicant's statutory right of appeal to the High Court has to be

computed. And, in the matter before me, clearly, the rejection letter dated 8 January 1996 constituted the final assessment from which date the applicants would have 21 days to appeal to the High Court. In the upshot, I ruled that the applicants' appeal to this court was filed well within the time limit prescribed by s 39(1) of the Act.

But the matter did not rest there. Encik Razali argued further that in the event it is ruled that the applicants are out of time, this court is not empowered to grant any extension of the time within which to enforce the right of appeal under s 39(1) of the Act. In support of this contention, he cited the Federal Court decision in *Land Executive Committee of Federal Territory v Syarikat Harper Gilfillan Bhd* [1981] 1 MLJ 234 (*'Harper Gilfillan Bhd'*).

In that case, Syarikat Harper Gilfillan Bhd (the respondents) had applied to the Land Executive Committee of the Federal Territory (the appellants) for amalgamation and subdivision of the land, which resulted in a ruling by the Director of Lands and Mines that they should first apply for a change of category of land use. Though the respondents had a right of appeal to the High Court under s 418 of the National Land Code 1965 ('the Code') against this decision of the Collector, they had instead, by originating summons, sought a declaration that upon true construction of the Code, they were not required to apply for a change of category of land use prior to the application for amalgamation and subdivision. Consequently, when the appellants applied to set aside the originating summons on the ground, inter alia, that the respondents had failed to exercise their right of appeal pursuant to s 418 of the Code, and the application was dismissed by the High Court, the Federal Court allowed the appeal against the decision largely on the grounds that upon the correct interpretation of s 418 of the Code, and having regard to the special provision for limiting the time within which to enforce the right (to quote): 'the indications are that Parliament has, by using plain and unambiguous language, intended the right (of appeal to the High Court) to be exclusive of any other mode of enforcing it'. And it was thereby rightly held that the court had no jurisdiction to entertain the claim sought by way of a prayer for declaration, as the respondents were precluded from seeking to enforce their statutory right by a method other than that prescribed by the Code creating it.

Clearly, in citing the case of *Harper Gilfillan Bhd* to support his contention that this court is not empowered to extend time, En Razali had taken completely amiss the ratio decidendi in that case. It ought to be noted that in *Harper Gilfillan Bhd*, in essence, the party aggrieved did not seek to move the court by virtue of their statutory right (viz s 418 of the Code) and particularly through an application for extension of time to appeal under s 418 of the Code, whereas in the instant case the applicants had, quite rightly, sought to enforce their statutory right vested in them under s 39(1) of the Act rather than to enforce such statutory right by an action for a court declaration. Thus, obviously, despite counsel's endeavour on this score, the question that lingered on is whether this court is empowered to enlarge the period within which the applicants have to

A enforce their statutory right under s 39(1) of the Act, as a fortiori this question now falls to be decided by virtue of prayer (a) of encl 1.

As we are now faced with the perennial question as to whether the court is clothed with powers to enlarge or abridge time — and the ambit of such powers — in the absence of express provisions for or prohibition against such enlargement or abridgement in the particular statute prescribing the time for the enforcement of certain rights, I shall now attempt briefly to set out some guidelines pertaining thereto as follows:

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- (a) It is now well settled that the plenary or general judicial power conferred by s 25(2) read with para 8 of the Schedule to the Courts of Judicature Act 1964 ('the Judicature Act') is a power-conferring provision which the court may, in appropriate circumstances, invoke. This is so as, inter alia, a vital distinction ought to be drawn between the words 'jurisdiction' used in the Second Schedule to the 1948 Ordinance and 'power' in the Schedule to the Judicature Act; this deliberate change of wording denotes a change in meaning. Such construction of s 25(2) in conjunction with para 8 of the Judicature Act owes its genesis to the judgment of Thomson CJ (as he then was) in the Court of Appeal case of *Lee Lee Cheng v Seow Peng Kwang* [1960] MLJ 1; and repeatedly adopted and followed thereafter in *Damodaran v Vasudevan* [1975] 2 MLJ 231; *Zainal Abidin bin Haji Abdul Rahman v Century Hotel Sdn Bhd* [1982] 1 MLJ 260; *Aspatra Sdn Bhd & Ors v Bank Bumiputra Malaysia Bhd & Anor* [1987] 2 CLJ 377; *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 and more recently in *Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271 (wherein the restrictive interpretation of s 25 read with the Schedule thereto by the Federal Court in *Pahang South Union Omnibus Co Bhd v Minister of Labour & Manpower & Anor* [1981] 2 MLJ 199 was held to be an obiter dicta or given per incuriam).
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- (b) Whether the court should exercise its general or plenary powers under para 8 of the Schedule to enlarge or abridge time would depend, in each particular case, upon the conclusion arrived at after careful deliberation, to ascertain the real intention of the Legislature on the question whether the provision as to time set forth in the particular Enactment concerned is either expressly or by necessary implication, mandatory or imperative and therefore obligatory, rather than only directory or merely declaratory in nature. Thus, in the recent Federal Court decision in *Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed*, it was held that the time prescribed in s 15(5) of the Legal Profession Act 1976 was mandatory and therefore obligatory and did not admit of any construction that permit the exercise of the power to abridge time (see also my earlier similar decision pertaining to this same provision in *Pamela Ong Siew Im v Majlis Peguam & Ors* [1995] 3 AMR 2111); and so also it was decided concerning the time limit imposed by ss 98 and 99 of the same Act, in *Majlis Peguam Malaysia & Ors v Joseph Au Kong Weng* [1993] 2 CLJ 417.
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- (c) It is a well known and settled rule of construction that the specific provision overrides the general provision (see eg *Lee Lian & Ors v PP* [1956] MLJ 191 at p 193) and thus, a general provision cannot be invoked to defeat or supersede a mandatory requirement of any written law as to time. A
- (d) Specific provisions with respect to time are always prima facie mandatory and obligatory, and provisions which are ex facie obligatory cannot, without strong reason given, be held only directory: see *Barker v Palmer* (1881) 8 QBD 9. It is thus the task of the court to ascertain in each case the real intention of the Legislature, by determining whether such provision as to time is indeed obligatory or mandatory, bearing in mind that there is no rule of thumb to ascertain legislative intention: see *Cheatley v The Queen* (1972) 127 CLR 291; *Stock v Frank Jones (Tipton) Ltd* [1978] 1 WLR 231 at p 238 and *Arthur Yates & Co Ltd v Ministry of Agriculture and Fisheries* [1979] 1 NZLR 469. B  
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- (e) In the deliberation to ascertain legislative intention, the court has to be mindful that: D
- (i) the Act, taken as a whole (see *Ex p Tasker, Re Hamman* [1971] 1 NSWLR 804) and the general object intended to be secured by the Act, as viewed from the context of the particular provision involved, has to be considered (see *Howard & Ors v Bodington* (1877) 2 PD 203 at p 211 and *Vandyke v Vandyke* (1976) 12 ALR 621) and if such provision has a proviso, both the provision and the proviso are to be read in such a manner that they mutually throw light on each other and result in a harmonious construction; E
- (ii) if there is a change of wording as compared to other similar provisions in the same or in the earlier amended statute, it must be taken to have been made deliberately (see *Ricket v Metropolitan Railway Co* (1867) LR 2 HL 175 at p 207; *R v Price & Ors* (1870-71) LR 6 QB 411 at pp 416-417; *DR Fraser & Co Ltd v Minister of National Revenue* AIR 1949 PC 120 at p 123 and *Jeffs & Ors v New Zealand Dairy Production and Marketing Board & Ors* [1966] 3 All ER 863 (PC) at p 870), considering that we ought in general to assume that the Legislature knows the existing state of the law (see *H Young & Co v The Mayor and Corporation of Royal Leamington SPA* (1882-83) 8 App Cas 517 at p 526); F  
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- (iii) the consequential or 'practical outcome' construction ought normally be applied (see *R v Committee of Lloyd's, ex p Moran* [1983] The Times, 24 June and also *Imperial Chemical Industries Ltd v Shatwell* [1965] AC 656 at p 675);
- (iv) the use of the word 'shall' in contradistinction to the word 'may' is, subject to the context in which the word appears, taken prima facie to import a mandatory or obligatory intention of the Legislature (see *Tan Sri Dato' Mohamed Yusoff bin Mohamed*); I

- A (v) every statute is to be expounded according to its manifest and express intention (see *AG for Canada & Anor v Halett & Carey Ltd & Anor* [1952] AC 427 and *Bank of New Zealand v Gernac Modular Industries Ltd* [1972] NZLR 661 at p 670);
- B (vi) a purposive interpretation should be applied (see *Lim Phin Khian v Kho Su Ming* [1996] 1 MLJ 1 at p 19), otherwise the words added by the amending Act would be otiose (see *State of UP v Radhey Shyam* AIR 1989 SC 682 at pp 689–690).
- C (f) Even if it is held by the court that upon the proper construction, the particular provision as to time is not obligatory or mandatory, and would thereby permit the exercise of the power to enlarge or abridge time, the court must nevertheless exercise its discretion judicially, in accordance with correct principles and not arbitrarily or capriciously or contrary to existing written laws or rules of court, and this must be reflected in its grounds favouring the exercise of such discretion.

D Reverting to the case at hand, after having carefully considered, in the light of the above adumbrated guidelines, the manner of expression in s 39(1), as viewed within the context of the whole Act, I am of the firm opinion that the provision as to time set forth therein is merely directory or declaratory rather than mandatory in nature. Further, it is not without significance that the Legislature had chosen to use the word ‘may’ in the phrase ‘may, within twenty-one days after’ occurring in s 39(1) of the Act.

E Thus, if I am wrong on the construction of the word ‘assessment’, yet — in the exercise of the general powers conferred on the High Court under para 8 of the Schedule to s 25(2) of the Judicature Act — for reasons aforesaid and the added reason that the applicants had, at that crucial

F period pending appeal to this court, quite rightly adopted as their guide the then only prevailing ratio decidendi on the point as encapsulated in *Shell Malaysia Trading Bhd v Pemungut Duti Setem, Johor Bahru*, I would also, in the alternative, allow prayer (1) of this originating motion in terms that it is ordered that the period of extension allowed to the applicants to file the appeal out of time shall be co-extensive with the date of the filing

G hereof. Surely, once it is determined that the relevant provision as to time is neither expressly nor by necessary implication mandatory or obligatory, the fact that an applicant for extension or abridgement of time was merely following a decided authority at the material time would constitute a compelling reason for the court to exercise its discretion in the applicant’s

H favour, under its additional powers set out in para 8 of the Schedule to s 25(2) of the Judicature Act.

*Order accordingly.*

Reported by Loo Lai Mee